

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Claudia Quigley	Team: Team # 7	CCRB Case #: 200901750	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/31/2009 1:52 PM	Location of Incident: Knickerbocker Avenue and Himrod Street	Precinct: 83	18 Mo. SOL 7/31/2010	EO SOL 7/31/2010	
Date/Time CV Reported Wed, 02/04/2009 3:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 02/04/2009 3:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Sean Claxton	06594	943092	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Carlough	24138	889705	PBBN TF
2. POM Brian Padovani	02199	944872	083 PCT
3. SGT David John	01956	906515	083 PCT
4. POM Anthony Anglisano	05544	934404	PBBN TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Claxton	Abuse: PO Sean Claxton seized § 87(2)(b) s property.	

Synopsis

§ 87(2)(b) arrived at the CCRB on February 4, 2009 to file a complaint. According to § 87(2)(b) on January 31, 2009 he was selling hotdogs at Knickerbocker Avenue and Himrod Street in Brooklyn. At approximately 1:52pm, PO Sean Claxton approached § 87(2)(b) and asked him for his ID. § 87(2)(b) provided his food vendor license. PO Claxton issued § 87(2)(b) two summonses for § 87(2)(b) and confiscated § 87(2)(b) pushcart (Allegation A).

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on February 4, 2009 (encl. 8B).

§ 87(2)(b) is a § 87(2)(b) old Hispanic male that works as a hotdog vendor. § 87(2)(b) is not fluent in English; therefore, the interview was conducted in Spanish by Inv. Claudia Quigley.

According to § 87(2)(b) on January 31, 2009, he was selling hotdogs at his usual spot at Knickerbocker Avenue and Himrod Street in Brooklyn. At approximately 1:05pm two male officers pulled over in a patrol car and approached § 87(2)(b). One officer was white and the other officer was black. Neither of them spoke Spanish. The officers asked for § 87(2)(b) ID and he provided his Mobile Food Vendor License. The officers issued § 87(2)(b) five summonses and threw away his buns, his hotdogs, and all the condiments in a garbage can. The officers called for a wagon, confiscated § 87(2)(b) hotdog cart, and left the premises. § 87(2)(b) stated that he has a valid food vendor license (encl. 8I) and he also has a valid Certificate of Authority (encl. 8J). According to the summonses provided by § 87(2)(b) he was issued three summonses for § 87(2)(b) by PO Richard Carlough from Patrol Boro Brooklyn North Task Force (encl. 14A-C) and two summonses for § 87(2)(b) by PO Sean Claxton from the 83rd Precinct (encl. 10A). The CCRB determined from the summonses that PO Richard Carlough, who is a white male, approached § 87(2)(b) at 1:05pm and issued him the three summonses. After PO Carlough left, § 87(2)(b) continued selling hotdogs. At approximately 1:52pm, PO Sean Claxton and Sgt. David John, who are both black males, approached § 87(2)(b). PO Claxton issued § 87(2)(b) the two summonses and confiscated § 87(2)(b) push cart.

§ 87(2)(b) borrowed a cart from another vendor and went back to work on February 2, 2009. § 87(2)(b) was selling hotdogs at Central Avenue and Grove Street in Brooklyn. At approximately 1:20pm PO Brian Padovani approached § 87(2)(b). PO Padovani asked § 87(2)(b) in English, "Oh, you are back here?" § 87(2)(b) responded, "Yes I'm selling, that's what I make a living of." PO Padovani took § 87(2)(b) ID and issued him a summons (encl. 8H). PO Padovani informed § 87(2)(b) that a customer had complained that one of § 87(2)(b) hotdogs was rotten. PO Padovani then asked § 87(2)(b) to get rid of the food. § 87(2)(b) had to throw away all the hotdogs, bread, sauces, and condiments in the garbage. § 87(2)(b) then asked PO Padovani not to take the cart because it was not his. PO Padovani allowed him to walk away with the cart and told him he never wanted to see § 87(2)(b) selling hotdogs in the area. § 87(2)(b) stated that these were the first encounters he had with these officers. § 87(2)(b) stated that on both occasion there were other hotdog sellers in the vicinity but the officers did not approach them.

Results of Investigation

Officer Identification

PO Carlough was identified as the officer that issued § 87(2)(b) the first three summonses. PO Sean Claxton then issued § 87(2)(b) two summonses and he identified Sgt. David John as his partner during his CCRB interview. PO Padovani issued § 87(2)(b) a summons on February 2, 2009 for § 87(2)(b).

Officers' Statements

PO Sean Claxton's Memo Book Entry, January 31, 2009 (encl. 9B).

PO Claxton noted in his memo book that at 1:52pm the officers observed a male in front of 412 Knickerbocker Avenue illegally vending from a pushcart. The male did not have a legal permit for the pushcart. The officer confiscated the card with the belongings, took it to the 83rd Precinct, and vouchered it. At 2:25pm the male that owned the pushcart, § 87(2)(b) arrived at the precinct to obtain the belongings from the pushcart, which included beverages, condiments, bread, and other assorted items. § 87(2)(b) signed PO Claxton's memo book confirming that he received the items.

PO Sean Claxton was interviewed at the CCRB on April 15, 2009 (encl. 12B).

On January 31, 2009 PO Claxton worked 0705 x 1540 hours. He was assigned as the sergeant operator for patrol supervisor Sgt. David John. They were dressed in uniform and assigned to a marked car, #4143.

According to PO Claxton, on January 31, 2009, he was driving past 413 Knickerbocker Avenue in Brooklyn when at approximately 1:52pm he and Sgt. John observed § 87(2)(b) selling hotdogs from a pushcart. Sgt. John instructed PO Claxton to pull over next to § 87(2)(b) cart to check if § 87(2)(b) had a valid license to vend. PO Claxton pulled over and both officers exited the patrol car. The officers approached § 87(2)(b) and Sgt. John spoke to § 87(2)(b). PO Claxton could not understand the conversation as he does not speak Spanish and he does not know whether Sgt. John speaks Spanish or how he was communicating with § 87(2)(b). When it was determined that § 87(2)(b) did not have the proper documentation to vend PO Claxton asked § 87(2)(b) for his ID and issued him two summonses for § 87(2)(b). § 87(2)(b) showed PO Claxton that he was issued multiple summonses already. PO Claxton informed Sgt. John that § 87(2)(b) had already been summonsed for § 87(2)(b). At this time, Sgt. John informed PO Claxton that they were going to confiscate the cart. The officers confiscated § 87(2)(b) pushcart and transported it to the stationhouse. PO Claxton did not throw any of the items in the pushcart into a garbage can. At approximately 2:25pm, § 87(2)(b) arrived at the stationhouse and PO Claxton released all the items in the pushcart to him, but not the pushcart. PO Claxton stated that he had a Spanish speaking officer interpret for him and explain to § 87(2)(b) what PO Claxton was saying and why he needed § 87(2)(b) signature. PO Claxton did not recall the officer's name. PO Claxton did not interact or issue § 87(2)(b) a summons on February 2, 2009.

PO Richard Carlough's Memo Book Entry, January 31, 2009 (encl. 13B).

According to PO Carlough's memo book, his partner on January 31, 2009 was PO Anthony Anglisano. PO Carlough noted in his memo book that at 1:05pm he stopped § 87(2)(b) at 410 Knickerbocker Avenue and issued him three summonses. PO Carlough noted on the back of the summonses that at time and place of occurrence § 87(2)(b) was operating a mobile food cart on a NYC sidewalk impeding pedestrian traffic and failed to display his license.

Other Documents

- Mobile Food Vendor License (encl 8I) – This license was issued to § 87(2)(b) on January 17, 2008 and expires on January 31, 2010.
- Certificate of Authority (encl 8J) – The certificate was validated on December 13, 2007.

NYPD Documents

- 140th Command Roll Call (encl. 15A) – PO Carlough was assigned to tour 2 on January 31, 2009.
- 83rd Precinct Roll Call (encl. 16A-C) – PO Claxton and Sgt. John were assigned to tour 2 on January 31, 2009. PO Padovani was assigned to tour 2 on February 2, 2009.
- 83rd Precinct Command Log (encl. 17A-B) – voucher #§ 87(2)(b) was logged in by PO Claxton at 3:15pm as forfeiture.
- Voucher #§ 87(2)(b) (encl. 11A) – PO Claxton vouchered a hotdog pushcart and a blue and yellow umbrella belonging to § 87(2)(b) on January 31, 2009.

Disposition of Summonses

§ 87(2)(b) § 86(1)(3)&(4) § 87(2)(c)

Complainant/Victim Criminal Conviction History

§ 87(2)(b) § 86(1)(3)&(4) § 87(2)(c)

Civilian CCRB History

This is § 87(2)(b) only CCRB complaint (encl. 6A).

Police Officer CCRB History

PO Claxton does not have any substantiated CCRB allegations (encl. 5A).

Conclusions and Recommendations

Identification of Subject Officers

PO Claxton was identified as the officer that issued § 87(2)(b) the second set of summonses and confiscated his cart, as shown by the police documents.

Undisputed Facts and Disputed Facts

It is not in dispute that on January 31, 2009 § 87(2)(b) was selling hotdogs. § 87(2)(b) was issued five tickets because he § 87(2)(b). Although § 87(2)(b) presented a valid license during his CCRB interview, § 87(2)(b) did not have a permit for his pushcart. § 87(2)(g)

Assessment of Evidence

On January 31, 2009 § 87(2)(b) was selling hotdogs at Knickerbocker Avenue and Himrod Street in Brooklyn. PO Carlough approached § 87(2)(b) and issued him three summonses because § 87(2)(b) § 87(2)(b). About forty minutes later, PO Claxton issued § 87(2)(b) summonses for two of the same violations and confiscated his cart. Although § 87(2)(b) was able to produce his license during his CCRB interview, he had no evidence that he had a permit as well. § 87(2)(g)

According to the *New York City Administrative Code* Section 17-307(b), "It shall be unlawful to vend food from any vehicle or pushcart in a public space without having first obtained a permit for such vehicle or pushcart" (encl. 1A). Section 17-311(b and c) states that, "The food vendor's license shall be worn conspicuously at all times while operating as a food vendor. The permit plate shall be firmly affixed to the vending pushcart in a conspicuous place" (encl. 2A). According to the *New York City Department of Health and Mental Hygiene*, "You may not sell food from a pushcart which does not have a valid DOHMH permit or inspection sticker, even if you have a photo ID badge" (encl. 3A). § 87(2)(g)

Allegation A: Abuse of Authority - PO Sean Claxton seized § 87(2)(b) s property.

On January 31, 2009 PO Claxton confiscated § 87(2)(b) pushcart. § 87(2)(g) Patrol Guide Procedure 218-40, which states that officers should "confiscate vehicles of unlicensed vendor distributors and institute forfeiture proceedings" (encl. 4A). § 87(2)(g)

Investigator: _____ **Date:** _____

Supervisor: _____ **Date:** _____

Reviewed by: _____ **Date:** _____

Reviewed by: _____ **Date:** _____
